

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BILL ADAMSON, et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

3:08-cv-0621-LDG-RAM

LARRY J. MOORE, et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

3:09-cv-0167-LDG-RAM

BILL ADAMSON, et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

3:09-cv-0715-LDG-RAM

1 On March 24, 2011, the court conducted a hearing on the following matters:

2 Adamson v. United States (Adamson I), 3:08-cv-621-LDG-RAM

3 United States' motion to strike class allegations (#26) (denied without prejudice to
4 subsequent reinstatement)

5 Moore v. United States, 3:09-cv-167-LDG-RAM

6 United States' motion to strike class action allegations (#10) (denied without
7 prejudice to reconsideration in ruling on the motion for class certification)

8 Plaintiffs' motion for class certification (#68)

9 Adamson v. United States (Adamson II), 3:09-cv-715-LDG-RAM

10 United States' motion to strike class action allegations (#22) (denied for case
11 management purposes without prejudice to reinstatement)

12 The parties in the Adamson cases have stipulated to the granting of the United States'
13 motions to strike. During the hearing, the court advised the parties in Moore that it was
14 preliminarily inclined to grant the United States' motion to strike and deny plaintiffs' motion for
15 class certification. Based on that position, the Moore plaintiffs requested leave to file a motion for
16 leave to amend the complaint to add four previously unnamed plaintiffs, Jennifer Tapia, Daniel
17 Tapia, James Pringle and Richard Penn (the "unnamed plaintiffs").

18 To prosecute a suit as a class action, plaintiffs must establish that the court has jurisdiction
19 over the claims upon which the class action is premised, and that both the four prerequisites
20 prescribed in Fed. R. Civ. P. 23(a) and the standards for at least one of the three types of class
21 action enumerated in Fed. R. Civ. P. 23(b) are satisfied. In focusing on the jurisdictional element,
22 the court determines that plaintiffs' proposed class would include the unnamed plaintiffs and
23 others similarly situated who have not met the sovereign immunity waiver requirements of 28
24 U.S.C. § 2675(a) and accompanying regulations. That law requires that a claim for damages to
25 property must be presented to the administrative agency by the owner of the property or by the
26 owner's duly authorized agent or legal representative. While plaintiffs' motion for class
certification and motion to amend the complaint seek to salvage the claims of the unnamed

1 plaintiffs and others who failed to comply with § 2675, the claim requirement of § 2675 is
2 jurisdictional in nature and may not be waived. Blain v. United States, 552 F.2d 289, 291 (9th Cir.
3 1975). Plaintiffs have shown neither that the members of the proposed class complied with the
4 presentment requirement, nor that the members of the proposed class authorized plaintiffs to
5 present their claims to the agency. Plaintiffs, therefore, have failed to establish that a class claim
6 was properly submitted on behalf of the proposed class, and class certification will be denied.

7 In a further effort to save the unnamed plaintiffs' claims, plaintiffs have filed a motion for
8 leave to amend the complaint to name new plaintiffs or, in the alternative, a motion to intervene by
9 the unnamed plaintiffs. The United States denied the unnamed plaintiffs' administrative claims on
10 May 15, 2009, and the unnamed plaintiffs did not file suit within the six-month limitation period
11 after the denial. See 28 U.S.C. § 2401(b). Plaintiffs argue that the pendency of the class
12 certification effectively tolls the running of the six-month period in which the unnamed plaintiffs
13 may become parties in the action—thus avoiding their preclusion for not having filed an action
14 within the uninterrupted limitations period.

15 Generally, equitable doctrines of tolling may excuse a claimant's tardiness. However, "[i]f
16 a statute of limitations aims not so much to protect a defendant's case-specific interest in
17 timeliness as to achieve a broader system-related goal, such as facilitating the administration of
18 claims, limiting the scope of a governmental waiver of sovereign immunity, or promoting judicial
19 efficiency, a court's flexibility in using equitable doctrines to extend deadlines is limited." Marley
20 v. United States, 567 F.3d 1030, 1035 (9th Cir. 2009) (citations internal marks omitted). Such
21 statutes of limitations are referred to as "jurisdictional." Id. The Ninth Circuit has held that the
22 requirements of § 2401(b) are "jurisdictional" in the sense that "[t]he FTCA includes a detailed
23 administrative process for handling tort claims against agencies. The statutory filing deadline is a
24 key part of that process and plainly facilitates the administration of claims." Id. at 1036.
25 Therefore, in a case that does not meet the deadlines of § 2401(b), the court does not have
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1 jurisdiction and cannot apply the doctrines of equitable tolling that may otherwise allow the case
2 to proceed.

3 Plaintiffs attempt to distinguish Marley, upon which the United States relies, on the ground
4 that the plaintiff in that case did not rely upon a pending class action to toll the statute of
5 limitations, but rather re-filed an individual FTCA case after the limitations period had run. While
6 that is a distinction, plaintiffs do not explain, and the court does not perceive, why the separate
7 contexts would make a difference to the characterization and application of § 2401(b). Indeed, the
8 case by which plaintiffs urge the court be guided, Crown, Cork & Seal Co. v. Parker, 462 U.S. 345
9 (1983), is a Title VII case, and does not even address FTCA tolling. In any event, post-Parker
10 cases have distinguished FTCA and Title VII limitations requirements on the ground that the
11 administrative agency in FTCA cases is given broad authority to settle cases, where the EEOC has
12 only authority to conciliate, not settle claims. See Arctic Slope Native Assoc. v. Sebelius, 583
13 F.3d 785, 795 (Fed. Cir. 2009).


14 Finally, given the acknowledgment by plaintiffs that their intent in filing a class action was
15 to save the claims of the unnamed plaintiffs and similarly situated individuals, the court finds that
16 the unnamed plaintiffs are not entitled to the equitable tolling principles articulated in American
17 Pipe & Const. Co. v. Utah, 441 U.S. 538 (1976). As American Pipe's concurring opinion
18 cautions, class actions should not be framed by counsel in an effort to take advantage of equitable
19 tolling principles "to attract and save members of the purported class who have slept on their
20 rights." Id. at 561 (J. Blackmun, concurring). Accordingly, based on futility, the court will deny
21 plaintiffs' motion for leave to amend to name new plaintiffs or, in the alternative, motion to
22 intervene.

23 THE COURT HEREBY ORDERS that United States' motion to strike class action
24 allegations (#10) is reinstated and GRANTED.

1 THE COURT FURTHER ORDERS that plaintiffs' motion for class certification (#68) is
2 DENIED.

3 THE COURT FURTHER ORDERS that plaintiffs' motion for leave to amend the
4 complaint to name new plaintiffs or, in the alternative, motion to intervene (#138) is DENIED.

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6 Dated this 9 day of June, 2011.

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8 
9 Lloyd D. George
United States District Judge